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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/919,430	07/31/2001	Kevin H. Hansen	IDF 1660 (4000-04700)	4192
28003	7590	10/06/2006	EXAMINER	
SPRINT			WALSH, JOHN B	
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OVERLAND PARK, KS 66251-2100			2151	

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/919,430

Applicant(s)

HANSEN ET AL.

Examiner

John B. Walsh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-20 and 29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-20 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4, 6-8 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,974,237 to Shurmer et al.

As concerns claim 1, a gateway (column 4, line 59); a switch (column 4, line 38); a data routing system (figure 4; communications network); a bandwidth measurement device (abstract, measure network performance; column 6, line 65-bandwidth is parameter measured) configured for independently determining upload or download data transfer rates between said client and said gateway, and for distinguishing the upload or download data transfer rate between the client and the gateway from the upload or download data transfer rate between the client and the network (abstract, parameters of individual components of network, such that transfer rates for any leg/path of the system can be determined, such as from a client to a gateway and a client and a network; column 7, lines 10-13-receiving and sending, upload and download).

As concerns claim 2, a router (column 8, lines 59-60-switch routes data).

As concerns claim 4, an ATM edge switch (column 8, lines 37-39; figure 19).

As concerns claim 6, a server (column 5, line 15).

As concerns claim 7, a measurement application (figures 2 and 3; column 7, lines 27-45; furthermore inherent to have software running on the server).

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As concerns claim 8, the use of the term "if" is a conditional statement, wherein the limitation need not be satisfied if the condition is false.

As concerns claim 29, the upload or download transfer rate is compared to the baseline data transfer rate to determine if problems exist (column 7, lines 37-52).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5 and 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,974,237 to Shurmer et al. as applied above.

As concerns claim 5, it would have been an obvious design choice for said service node is an ISP and said network is the Internet. These limitations do not appear to effect the patentable operation of the invention and would work equally well with another network.

As concerns claim 12, Shurmer et al. disclose all of the limitations (see claim 1 above) except for the xDSL lines. This appears to be an obvious design choice since the network would work equally well with other communication lines and it does not appear to effect the patentable operation of the invention.

As concerns claim 13, a router (column 8, lines 59-60-switch routes data).

As concerns claim 14, a gateway (column 4, line 59).

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As concerns claim 15, a terminal (figure 1) and said bandwidth measurement device is coupled to the router (coupled via the communication connections of the network).

As concerns claim 16, a server (column 5, line 15).

As concerns claim 17, a measurement application (figures 2 and 3; column 7, lines 27-45; furthermore inherent to have software running on the server).

5. Claims 9-11 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,974,237 to Shurmer et al. as applied above in view of U.S. Patent No. 6,757,255 to Aoki et al.

Shurmer et al. '237 do not explicitly disclose an applet on the client or a web application residing on a server.

Aoki et al. '255 teach an applet on a client and a web application residing on a server (column 10, lines 37-63).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Shurmer et al. '237 to provide an applet/agent on the client side or on a server, as taught by Aoki et al. '255, in order to provide enhanced accessibility to the application.

As concerns claims 11 and 19, Shurmer et al. '237 disclose wherein said bandwidth measurement server further comprises a measurement database (22) coupled to said measurement application, said measurement database maintaining data collected during measurement of said upstream and/or downstream data transfer rates.

Response to Arguments

6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rakoshitz et al. '077 disclose a traffic-monitoring tool for incoming and outgoing data with a web server and the Internet.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

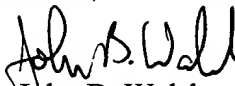
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John B. Walsh whose telephone number is 571-272-7063. The examiner can normally be reached on Monday-Wednesday from 5:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 571-272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


John B. Walsh
Primary Examiner
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